

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

HENRY HARRIS, on Behalf of Himself)
and Others Similarly Situated,)
)
Plaintiff,)
)
v.)
)
PATHWAYS COMMUNITY)
BEHAVIORAL HEALTHCARE, INC.,)
)
Defendant.)

Case No.: 10-0789-CV-W-SOW

ORDER

Before the Court is defendant Pathways Community Behavioral Healthcare, Inc.'s Motion to Dismiss (Doc. #4) and plaintiff Henry Harris's Amended Complaint (Doc. #10).

Pursuant to the Federal Rules of Civil Procedure, "[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). Defendant filed its Motion to Dismiss on September 27, 2010, and therein argued that plaintiff's Complaint should be dismissed pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiff filed an Amended Complaint on October 11, 2010. Therefore, because plaintiff filed his Amended Complaint within 21 days of defendant's responsive pleading in compliance with Fed. R. Civ. P. 15, defendant's pending Motion to Dismiss is rendered moot. See Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002) (plaintiff's motion to amend the complaint rendered moot defendant's motion to dismiss the original complaint). Of course, defendant may reassert its motion to dismiss in response to plaintiff's Amended Complaint.

Accordingly, it is hereby

ORDERED that defendant Pathways Community Behavioral Healthcare, Inc.'s Motion to Dismiss (Doc. #4) is denied without prejudice.

/s/ Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

DATED: October 18, 2010